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7 CFR Ch. XVII (1-1-08 Edition)

administering certain electric and telephone programs. See 7 CFR 1700.1.

Service or *Servicing* means the following activities:

(1) The billing and collecting of the private loan payments from the borrower;

(2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and

(4) Such other activities as may be specified in the loan guarantee agreement.

Settlement Date means the date the borrower disburses funds to the FFB in order to complete a prepayment pursuant to this subpart, and shall be a date agreed to by RUS, and a date on which both the FFB and the Federal Reserve Bank of New York are open for business.

Standard Electric Program Application shall have the meaning specified in § 1786.29(c)(1).

Telephone Borrower means a borrower that provides telephone service as defined in 7 CFR 1735.2(a).

Telephone Program Applications shall have the meaning specified in § 1786.29(c)(2).

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.27(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990, and amended at 59 FR 66440, Dec. 27, 1994]

§ 1786.28 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB loan pursuant to this subpart, the borrower must:

(1) Demonstrate that the FFB loan was outstanding on July 2, 1986;

(2) Prepay the FFB loan by:

(i) Using a private loan with the existing loan guarantee;

(ii) Using internally generated funds; or

(iii) Using a combination of a private loan with the existing loan guarantee and internally generated funds; and

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(b) *Lenders.* To participate pursuant to this subpart, in a borrower's prepayment of an FFB loan by means of a private loan, the lender must:

(1) Be a private legally organized lender, or a lender established pursuant to the Farm Credit Act of 1971, as amended;

(2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the Loan is located;

(ii) Be a financially viable lender; or

(iii) Be a trust administered by an entity meeting the requirements of paragraph (b)(2) (i) or (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan. A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* A borrower who qualifies pursuant to § 1786.28(a) may at its option elect to use a private loan to make a prepayment, or a portion of a prepayment, pursuant to this subpart.

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Private loans, the proceeds of which are used exclusively to prepay FFB loans, shall be eligible for a guarantee under this subpart. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. The private loan shall be structured in a manner which in the judgment of RUS shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^n (C_o - A_i) T_i}{(J - n)}$$

Where,

C_r =The revised interest rate cap;

C_o =The original interest rate cap at the time of prepayment;

A_i =The average interest rate actually charged in the i^{th} period;

T_i =Length of the i^{th} period expressed in years;

n =The number of years that have elapsed since the initial prepayment;

J =The initial term of the private loan, at the time of prepayment;

Subject to the constraint that A_i must be less or equal to C_o).

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this subpart was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially similar to the private loan, on such dates as the lender, the borrower and RUS may agree, provided however, that such a refunding loan shall comply with the provisions of §1786.28(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan

shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except

(i) With the written approval of the Administrator;

(ii) In the event that the guaranteed note evidencing the private loan is held by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to §1786.28(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide RUS with the right to accelerate the note evidencing the private loan upon the occurrence of any "Event of Default" under the mortgage with the effect that all of the unpaid principal and interest on any such note shall become immediately due and payable to RUS, and RUS shall continue to pay under its guarantee the principal of and interest on such note without taking into account such acceleration. The loan documentation shall also provide RUS with a right, upon the occurrence of such an "Event of Default," to accelerate payment on its guarantee and accelerate payment on the note evidencing the private loan on the earlier of any date the interest rate on the private loan is reset, without premium or penalty; any date the borrower may

prepay in accordance with the terms of the private loan, or the tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of the private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in §1786.28(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *Prepayments Without a Guarantee.* Qualifying borrowers may elect to utilize internally generated funds without a guarantee to prepay an FFB loan, or partially prepay an FFB loan, pursuant to this subpart, if

(1) The borrower notifies RUS, of its intent to prepay using internally generated funds in accordance with the application procedures set forth in this subpart; and

(2) The borrower submits a certification to RUS that the prepayment does not, materially adversely affect the financial stability of the borrower and its ability to meet all its obligations, including debt service on all loans made, guaranteed or lien accommodated under the RE Act which will remain outstanding after the date of the prepayment.

(e) *The Use of both a Private Loan and Internally Generated Funds.* Qualifying borrowers may elect to utilize a combination of private loans and internally generated funds without a guarantee, to prepay an FFB loan pursuant to this subpart, if

(1) The private loans comply with the provisions of paragraph (c) of this section, and

(2) The borrower complies with paragraph (d) of this section.

(f) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this subpart are:

(1) *Qualifying Borrowers.* In the case of qualifying borrowers other than financially distressed borrowers, FFB advances with long-term maturity dates may be prepaid pursuant to this subpart; and

(2) *Financially distressed borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in the opinion of the Administrator, if prepaid, would result in an economic savings to the financially distressed borrower.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

§ 1786.29 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.

(a) *Prepayment Authority.* So long as the aggregate amount of prepayments made after December 22, 1987, including prepayments made pursuant to §1786.28(d) and §1786.28(e), under section 306(A) of the RE Act, does not exceed \$2.5 billion, the approval of the Secretary of the Treasury is not required in order to make a prepayment pursuant to this subpart (such amount of prepayments is hereinafter called prepayment authority).

(b) *Program Allocations.* In accordance with the provisions of section 637 of the 1989 Appropriations Act, \$350 million of prepayment authority is allocated to RUS-financed electric systems and \$150 million of prepayment authority is allocated to RUS-financed telephone utilities. The amounts of prepayment authority allocated to electric program borrowers and telephone program borrowers shall not be transferred between programs. Borrowers may not sell, assign, or otherwise transfer prepayment authority to another borrower.

(c) *Categories of Prepayment Applications.* Applications received by RUS from borrowers desiring to prepay pursuant to this subpart will be separated into the following two application categories:

(1) *Electric Program Applications.* Electric program applications are applications to make a prepayment pursuant to this subpart from RUS-financed